

dismiss the case and remand it to the District Commander. A dismissal is without prejudice to the District Commander's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) If the Hearing Officer assesses a penalty, the Hearing Officer's decision contains a statement advising the party of the right to an administrative appeal. The party is advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 85-001A, 51 FR 19329, May 29, 1986]

**§ 1.07-70 Right to appeal.**

(a) Any appeal from the decision of the Hearing Officer must be submitted by a party within 30 days from the date of receipt of the decision. The appeal and any supporting brief must be submitted to the Hearing Officer. The only issues which will be considered on appeal are those issues specified in the appeal which were properly raised before the Hearing Officer and jurisdictional questions.

(b) The failure to file an appeal within the prescribed time limit results in the action of the Hearing Officer becoming the final agency action in the case.

**§ 1.07-75 Action on appeals.**

(a) Upon receipt, the Hearing Officer provides a copy of the appeal and any supporting brief to the District Commander who referred the case. Any comments which the District Commander desires to submit must be received by the Hearing Officer within 30 days. The Hearing Officer includes the District Commander's comments, or not later than 30 days after receipt of the appeal if no comments are submitted by the District Commander, the Hearing Officer forwards all materials in the case to the Commandant.

(b) The Commandant issues a written decision in each case and furnishes copies to the party, the District Commander, and the Hearing Officer. The

Commandant may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision of the Commandant on appeal shall be final. In addition to the actions which may be taken by the Commandant on appeal, the Commandant may also remit, mitigate or suspend the assessment in whole or in part. Upon the taking of remission, mitigation, or suspension action, the Commandant will inform the party of the action and any conditions placed on the action.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17555, May 11, 1987]

**§ 1.07-80 Reopening of hearings.**

(a) At any time prior to final agency action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(b) Petitions to reopen must be in writing describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner, whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence. The party must submit the petition to the Hearing Officer.

(c) The District Commander may file comments in opposition to the petition. If comments are filed, a copy is provided the party.

(d) A petition to reopen is considered by the Hearing Officer unless an appeal has been filed, in which case the petition is considered by the Commandant.

(e) The decision on the petition is decided on the basis of the record, the petition, and the comments in opposition, if any. The petition is granted only when newly found evidence is described which has a direct and material bearing on the issues and when a valid explanation is provided as to why the evidence was not and could not have been, in the exercise of due diligence, produced at the hearing. The decision is rendered in writing.

(f) Following a denial of a petition to reopen, the party is given 30 days to file an appeal if one has not already

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been filed, or to amend an appeal which has already been filed.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by CGD 87-008a, 52 FR 17555, May 11, 1987]

### § 1.07-85 Collection of civil penalties.

(a) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Coast Guard.

(b) Within 30 days after receipt of the Commandant's decision on appeal, or the Hearing Officer's decision in a case in which no appeal has been filed, the party must submit payment of any assessed penalty to the office specified in the assessment notice. Failure to make timely payment will result in the institution of appropriate action under the Federal Claims Collection Act and the regulations issued thereunder.

(c) When a penalty of not more than \$200 has been assessed under Chapter 43 or 123 of Title 46 U.S.C., the matter may be referred for collection of the penalty directly to the Federal Magistrate of the jurisdiction wherein the person liable may be found, for the institution of collection procedures under supervision of the district court, if the court has issued an order delegating such authority under section 636(b) of Title 28, United States Code.

[CGD 87-008a, 52 FR 17555, May 11, 1987]

### § 1.07-90 Criminal penalties.

(a) Prosecution in the Federal courts for violations of those laws or regulations enforced by the Coast Guard which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) Except in those cases where the approval of the Commandant is required, the Area, Maintenance & Logistics Command (MLC), and District Commanders are authorized to refer the case to the U.S. attorney. The Commandant's approval is required in the following cases where evidence of a criminal offense is disclosed:

(1) Marine casualties or accidents resulting in death.

(2) Marine Boards (46 CFR part 4).

(3) Violations of port security regulations (33 CFR parts 6, 121 to 126 inclusive).

(c) The Area, MLC, or District Commander will identify the laws or regulations which were violated and make specific recommendations concerning the proceedings to be instituted by the U.S. attorney in every case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 1.07-95 Civil and criminal penalties.

(a) If a violation of law or regulation carries both a civil and a criminal penalty, the Area, MLC, and District Commanders are authorized to determine whether to institute civil penalty proceedings or to refer the case to the U.S. attorney for prosecution in accordance with § 1.07-90.

(b) When the U.S. Attorney declines to institute criminal proceedings, the Area, MLC, or District Commander decides whether to initiate civil penalty proceedings or to close the case.

[CGD 78-82, 43 FR 54186, Nov. 20, 1978, as amended by USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 1.07-100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) *Commercial fishing industry vessel* means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) *Personal use quantity* means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. App. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in subpart F of 19 CFR part 171 in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or